



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

Sent via E-Mail

Douglas.J.Wade@usace.army.mil

April 23, 2010

CECW-CE, Douglas J. Wade
U.S. Army Corps of Engineers
441 G Street, NW
Washington, DC 20314-1000

Re: Docket Number COE-2010-0007
Process for Requesting a Variance From Vegetation Standards for Levees and
Floodwalls

Dear Mr. Wade:

Thank you for the opportunity to comment on the Corps proposed process for requesting a variance from vegetation standards for levees and floodwalls. The California Farm Bureau Federation is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of [53 county Farm Bureaus](#) currently representing approximately 81,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau has many members farming in California's Central Valley whose lands lie behind levees currently maintained as part of the Sacramento and San Joaquin River Flood Control Projects. We are commenting at this time in coordination with other concerned interests around the state because it is our assessment that, if adopted and implemented, the Corps' proposed process would likely adversely affect the operations and interests of many Farm Bureau members either directly or indirectly.

Farm Bureau generally shares the concerns of the California Department of Water Resources and the California Department of Fish and Game and joins in the joint submission by these agencies dated April 15, 2010. We also share the concerns of the California Central Valley Flood Control Association as expressed in the Association's letter to the Corps, dated April 19, 2010.



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

To reiterate a number of the concerns raised in those comments, but also to highlight the relevance and importance of this issue from the perspective of our own organization, we would ask that the Corps consider the following:

- The proposed process will greatly increase the already challenging financial and regulatory difficulties rural levees district face to fund and conduct necessary levee work.
- The Corps' proposed process fails to distinguish between urban and rural levees in California, either in terms of the property and populations protected or the ability of local beneficiaries to pay.
- The proposed process will expose rural levee districts, the State of California, and the Corps itself to heightened consultation requirements and potential take liabilities under federal and state endangered species laws.
- The proposed process abandons the efficient and effective "regional variance" approach allowed under previous Corps regulations in favor of an ineffective and inefficient individual variance process. (See CDWR-CDFG April 15, 2010 Attachment at page 53.)
- The Corps' process does not rely on the best available science and ignores that certain types of vegetation can, in fact, reduce erosion, seepage, and other structural problems with levees.
- As mentioned in CDWR's and CDFG's joint submission of April 15, the proposed process would threaten public safety by diverting limited funding away from priority work on levees in California and forcing levee managers to focus disproportionately on vegetation alone.
- As further discussed in CDWR's and CDFG's April 15 submission, massive clear-cutting of vegetation through the Central Valley could, in fact, increase underseepage, piping, sand boils, and other problems with levees, as documented where such clear-cutting has been carried out in other parts of the United States.
- Rather than articulating or prescribing a procedure to distinguish beneficial vegetation from harmful vegetation based on practical experience, common sense, and the emerging science in this area, the proposed process lumps *all* vegetation into the "bad vegetation" category and then places the burden to demonstrate the contrary on the state and local entities.



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

- The Corps' proposed process would impose unreasonable direct and indirect costs on agricultural landowners behind levees requiring a variance, including extensive engineering, consulting and administrative costs, costs associated with environmental compliance and mitigation, and even structural modification, reconstruction or replacement of existing levees. Since this would obligate levee districts to increase levee assessments to cover these increased costs, landowners would see their bottom line impacted in the form of increased operating costs at the farm level—or, if a local entity failed to successfully navigate the process, in increased financial exposure to potential levee failure and loss of property and income to flooding, along with other economic consequences, as discussed further herein.
- There is no possible mitigation for the proposed rule's massive impacts on habitat and fish and wildlife.
- The Corps' rule undercuts and contravenes years of positive collaborative effort in California's Levees Roundtable process. In addition, it preempts and co-opts the California's Central Valley Flood Control Planning process and the will of the California electorate with the passage of Propositions 1E and 84. The proposed process neither reflects, nor acknowledges various foundational principles of the Roundtable Framework's effort, including the Framework's recognition of probable structural benefits of vegetation in many instances, the use of science, and the rational prioritization of work as a function of assessed risk. (See CDWR/CDFG April 15, 2010 Attachment, pages 22 and 23.) The process ignores recent implementation of improved levee management practices as a result of DWR's Fall 2007 Interim Inspection Criteria (See Attachment, pages 23 and 24); additionally, the proposed rule reneges on the agreement achieved in the Roundtable Framework that flood systems in the Central Valley should retain "active" PL 84-99 status where California was able to show "positive progress" and meet milestones to achieve the Framework's interim goals and maintenance objectives (as it has).
- While the Corps cites certain existing statutory mandates and the Corps' existing regulations as the reason for the proposed rule, the rule is neither required by, nor is it consistent with those same statutes and regulations, or the Corps' past practice and policy. (See detailed discussion at pages 49 through 51 of CDWR's and CDFG's attachment to their April 15 letter.) In place of the proposed process, the Corps should consider other more flexible alternatives and approaches to the problem of vegetation on levees, yet it has not done so.
- The proposed process fails to fulfill the mandate of the Water Resources Development Act of 1996, Section 202(g), that the Corps' revised guidelines "address regional variations in levee management and resource needs." Specifically, the proposed process fails to recognize that California has a legacy system of levees that includes an extensive amount of vegetation that existed on those levees *prior* to their



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

incorporation into the Sacramento and San Joaquin River Flood Project systems. The process fails to recognize the Corps' long history of acquiescence to this fact, or its past policy and practice of actually encouraging and assisting actions to promote and maintain such vegetation on California levees. Moreover, the Corps fails to acknowledge the disastrous effect its process could have on remnant riparian forests along California levees, upon which various species rely for their survival.

- The Corps' process would require a finding by a state or local levee management entity that compliance with the particular requirements of that same process is the "only feasible" approach to addressing the existence of any non-conforming vegetation on its levees, short of simply clear-cutting such vegetation. In point of fact, however, there are *many* other "feasible" alternatives to the Corps proposed approach that the Corps has *not* considered. In particular, the Corps has not considered the more reasonable management practices identified for both urban and rural levees in the Regional Levees Roundtable process' February 2009 Roundtable Framework, as described on pages 41 and 42 of the attachment to CDWR's and CDFG's joint letter dated April 15, 2010.
- In proposing its rule, the Corps relies inappropriately on an environmental assessment that assumes any adverse impacts to the environment would occur, and can therefore be assessed only at the site-specific level for each individual variance. In addition, the Corps attempts to defer and shift compliance with state and federal endangered species acts to local and state entities in connection with each individual application for a variance. Where as here, however, a proposed action would result in potential significant adverse impacts to the environment, NEPA requires agencies to consider a reasonable range of feasible alternatives, analyze foreseeable cumulative, direct, and indirect impacts of the proposed process, and propose appropriate mitigation for those impacts in a programmatic EIS. Moreover, the rule is clearly a discretionary federal action requiring consultation under Section 7 of the ESA. Thus, the Corps' attempt to shift the burden of NEPA and ESA compliance on to local and state applicants ignores the Corps' own obligation to comply with these laws *before* approving the proposed process.
- Nothing in the Water Resources Development Act (WRDA) of 1996 or in the Corps existing operation and maintenance manuals requires or authorizes a withdrawal of federal disaster assistance eligibility under PL 84-99 where existing vegetation is present on levees. (See CDWR and CDFG's April 15, 2010 Attachment at page 49.) Yet, the Corps' rule would utilize the threat of potential loss of PL-84-99 coverage as a "stick" to motivate compliance with the rule. More than a "stick" however, many local levee sponsors might well never succeed in navigating the many significant legal, financial, and administrative hurdles this rule places in their path. Accordingly, it is perhaps inevitable that many entities would indeed lose their PL-84-99 coverage under the proposed process. This shifted liability could lead the State



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

of California to seek to ways to reduce its own exposure, for example, by eliminating or limiting levee subventions and other local assistance programs and this would, in turn, significantly increase the burden on already under-funded local districts, with consequent adverse impacts to public safety and property. Additionally, heightened flood risks in California's Central Valley could indirectly trigger actuarial adjustments on the part of banks and insurers that could adversely impact property values and California farmers' ability to obtain loans and crop insurance.

CONCLUSION

In fact, many levee managers share the Corps' concern that unmanaged vegetation on levees can compromise levee integrity. Similarly, local interests have long complained that excessive accumulation of vegetation in the California's flood bypass areas has been allowed to compromise the intended function of California's flood control system. At the same time however, a growing body of evidence suggests that some types vegetation can in fact reduce erosion and other adverse effects on levees. In the meantime, the reality is that trees, bushes, vines, and other vegetation grow on *many* of the levees in California's legacy system. The trick here lies in how to retain the benefits of such vegetation, while minimizing the associated risks. The Corps' proposed process represents an attempt to strike this balance. Unfortunately, there is little balance in the Corps' proposal.

Farm Bureau appreciates the opportunity to comment on the Corps' proposed variance process. In closing, Farm Bureau concurs with the closing recommendation in CDWR's and CDFG's April 15, 2010 Attachment (See Attachment at page 57): "[The Corps should] cease implementation of [the proposed] policies and procedures and [instead] continue the collaborative process with DWR and other agencies, [...] as outlined in the [California Levees Roundtable] Framework. Any vegetation removal requirements should proceed in a phased manner, based upon adequate supporting science, and reflecting the unique factors that apply to the Central Valley State-federal flood protection system."

Sincerely,

JUSTIN E. FREDRICKSON
Environmental Policy Analyst

cc:

Mark Cowin, California Department of Water Resources
John McCamman, California Department of Fish and Game
Lester Snow, California Natural Resources Agency
Melinda Terry, California Central Valley Flood Control Agency
Paul L. Kelly, Association of California Water Agencies